

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HECTOR PALERMO,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/20/2022

1:17-cr-290-GHW

ORDER

GREGORY H. WOODS, United States District Judge:

Hector Palermo, who is proceeding *pro se*, filed a motion for the modification of his sentence, arguing that his sentence was “substantively unreasonable.” Dkt. No. 675 (the “Motion”). By order dated October 22, 2022, the Court denied Mr. Palermo’s motion under the First Step Act and, in the alternative, as a request for compassionate release. Dkt. No. 681 (the “Order”). The Court noted that the application could be construed as petition for *habeas corpus* relief under 28 U.S.C. § 2255 and granted Mr. Palermo 60 days in which to notify the Court whether he wished the Court to consider the Motion as a petition under Section 2255.

On December 19, 2022, Mr. Palermo’s response to the Order was docketed. Dkt. No. 683. In his response, Mr. Palermo asks to withdraw the Motion. The Court construes this as an application that the Court treat as withdrawn the Motion to the extent that it could be construed as a petition for *habeas corpus*. It does not effect the Court’s denial of the Motion as construed as a motion under the First Step Act and as a motion for compassionate release. Mr. Palermo’s request is granted. The Court will not treat the Motion as a petition for *habeas* relief.


Because Mr. Palermo has not at this time made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good

faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to mail a copy of this order to Mr. Palermo, and to terminate the motion pending at Dkt. No. 683.

SO ORDERED.

Dated: December 20, 2022
New York, New York


GREGORY H. WOODS
United States District Judge